TAXATION—INHERITANCE AND TRANSFER TAXES—TRUSTEE'S COMMISSIONS—APPROXIMATING EXPENSES OF ADMINISTRATION.—A New Jersey testator left the residue of his estate to his executors to hold as trustees during the life of his wife, with remainders after her death. By the New Jersey statutes, commissions of trustees are to be fixed by the courts with reference to the "actual pains, trouble and risk" involved. Under the Transfer of Property Tax Act of 1909 (N. J. Comp. St. 1910, p. 5301) a tax was assessed on the residue without allowance for trustees' commissions, and the executors and trustees appealed. *Held,* that trustees' commissions should be deducted in determining the net taxable value of the residue passing to the beneficiaries, but that the comptroller's office could not lawfully estimate in advance the amount of such commissions, and must await the final allowance of the commissions by the proper court. *In re Christie's Estate* (1917, N. J. Prerog. Ct.) 101 Atl. 64.

On the first point the court follows the New York decisions, on the ground that the New Jersey Transfer of Property Tax Act was copied from the New York act, from which it would be presumed that the legislature intended to adopt the established construction in New York. The New Jersey act applies to all stocks in New Jersey corporations held by foreign decedents, and its administration is therefore of practical interest to lawyers everywhere. The practice of the comptroller's office has been to approximate and allow in the assessment the estimated expenses of administration, without waiting for the estate to be finally settled. This practice is disapproved by the court as "not warranted in law." It is to be hoped that the decision on this point may be qualified or overruled or the act amended to permit a continuance of the former practice, at least in the case of foreign decedents. Otherwise the settlement in other states of estates containing New Jersey corporation securities will be subjected to great practical inconvenience and delay.

WILLS—OLOGRAPHIC WILL—USE OF TYPEWRITER.—The California Civil Code, sec. 1277, required that an olographic will should be entirely "written, dated and signed by the hand of the testator himself." A testator wrote his will on the typewriter himself and signed it with his own hand. *Held,* that in view of the reason for dispensing with witnesses to wills, namely the protection against forgery furnished by identification of handwriting, the word "written" in section 1277 should not be construed to include typewriting, and that the will was not entitled to probate as an olographic will. *In re Dreyfus' Estate* (1917, Cal.) 165 Pac. 941.

The California statutes, like those of other states, require every will, except a nuncupative will, to be "in writing." Cal. Civil Code, sec. 1276. Yet it is hardly to be doubted that typewritten wills, when fully attested by witnesses, are constantly admitted to probate in California, as elsewhere. Nevertheless, the reasoning of the court would seem to justify giving a narrower meaning to the word "written" in section 1277, though the only case found on the same point is *contra. In re Aird* (1905) 28 Quebec Super. Ct. 235.

WORKMEN'S COMPENSATION ACT—INJURY ARISING OUT OF THE EMPLOYMENT—"HORSEPLAY."—An employee sustained fatal injuries when another

employee, as an act of sport, turned an air-compressor upon him. The employer had known of the employees' habit of using the air-compressor in sport, but had made no objection. The employee was working when injured. *Held,* that the injury arose out of the employment within the meaning of the Workmen's Compensation Act. *In re Loper* (1917, Ind.) 116 N. E. 324.

It is generally held that the employer is exempt from liability for compensation where the injury to the employee is caused by the wilfully tortious act of either fellow employees or outsiders. *Armitage v. Lancashire & Y. R. R. Co.* [1902] 2 K. B. 178; *Union Sanitary Mfg. Co. v. Davis* (1917, Ind.) 115 N. E. 676. Such injuries are said not to arise "out of the employment." On similar principles compensation is generally denied where the injury is the result of "horseplay." *Wilson v. Laing* (1909) 46 Sc. L. Rep. 843; *Fishering v. Pillsbury* (1916) 172 Cal. 690. The principal case appears to be the first to recognize an exception where the habit of horseplay is knowingly allowed by the master to continue—thus, in the court's view, making the habit an element of the conditions under which the employee is required to work. The decision seems sound, and an analogy to support it may be found in such cases as *Rowland v. Wright* [1909] 1 K. B. 963 (the "stable-cat case"), and *Nisbet v. Rayne, etc.* [1910] 2 K. B. 689. By failing to control his recklessly playful employees the master subjects their fellow employees to a special hazard. A further analogy is found in the common-law doctrine that the master is not only under a duty to a servant to make proper rules for the use of safe methods of work by fellow servants, but may also be liable if, having made such rules, he permits their habitual violation. See *Ohio & Miss. R. R. Co. v. Collarn* (1881) 73 Ind. 261, 273; *cf. Hogle v. Franklin Mfg. Co.* (1910) 199 N. Y. 388, 92 N. E. 794.

F. C. H.

WORKMEN'S COMPENSATION ACT—INJURY "ARISING OUT OF" EMPLOYMENT—PERIL ATTACHED TO WORKMAN'S PARTICULAR LOCATION.—The falling of a wall on the adjoining premises of a neighbor carried down the roof of the defendant's shed, in which the plaintiff was at work as a herring packer, and injured the plaintiff. *Held,* that the injury was caused by an "accident arising out of the employment." *Thom v. Sinclair* [1917] A. C. 127, 116 L. T. 609.

The compensation acts of many of the states are identical with the English Act in limiting compensation to employees injured by accident "arising out of" and "in the course of" the employment. Drawing a distinction between the two conditions of liability indicated by the above-quoted phrases, it has generally been held that "arising out of" includes only risks incidental to the nature or character of the employment. *Craske v. Wigan* (C. A.) [1909] 2 K. B. 635; *Hoenig v. Industrial Com.* (1915) 159 Wis. 646, 150 N. W. 996. The accident need not be one that could have been foreseen or expected. *Larke v. Hancock Life Ins. Co.* (1915) 90 Conn. 303, 97 Atl. 320. Nor need it be one peculiar to the employment, if the employment accentuates a common hazard. *Andrew v. Failsworth Ind. Soc.* (C. A.) [1904] 2 K. B. 32; *State v. District Court* (1915) 129 Minn. 502, 153 N. W. 119. But the weight of judicial opinion has been opposed to the